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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re CHARLES H., a Person Coming Under  
the Juvenile Court Law.

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LOS ANGELES COUNTY DEPARTMENT  
OF CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

KAREN O.,

Defendant and Appellant.

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B168448

(Los Angeles County  
Super. Ct. No. CK48441)

APPEAL from an order of the Superior Court of Los Angeles County,  
Valerie Skeba, Referee. Affirmed.

Orren & Orren and Tyna Thall Orren, under appointment by the Court of Appeal,  
for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

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Karen O. (mother) appeals the order entered on May 6, 2003, in the above captioned matter. We affirm.

### **FACTUAL AND PROCEDURAL BACKGROUND**

A family law stipulation and order dated January 8, 2003, granted mother unmonitored visitation with 14-year-old Charles every other weekend and alternating Wednesdays.

A dependency petition filed April 9, 2003, alleged mother has a history of mental problems and substance abuse and mother physically abused Charles “by grabbing and twisting the child’s arm . . . caus[ing] the child unreasonable pain and suffering.”

The detention report prepared by the Department of Children’s and Family Services (DCFS) indicated Charles told a Children’s Social Worker (CSW) he no longer wished to visit mother overnight because he was afraid she might kill him while he sleeps. Charles reported mother drank alcohol to excess and has driven under the influence of alcohol while he was in the car. Mother made inappropriate comments to Charles and once twisted his arm so hard he thought it was going to break. When Charles was nine years old, he once had to go to a neighbor’s house for help after mother frightened him with her strange talk and behavior. When the police arrived, mother was hospitalized. Charles denied that his father, a California Highway Patrol Officer, had coached him to say these things.

Mother testified at the adjudication of the petition. Mother claimed the only incident she could recall that Charles may be referring to was when she once grabbed Charles by the arm after he kicked her car and dented it. Mother grabbed Charles by the arm to prevent further damage to the vehicle but denied she had ever abused Charles and denied she had driven while under the influence. With respect to the allegations of psychiatric care, mother indicated that when she sought assistance after her ex-husband physically abused her, she was involuntarily committed for 72 hours which “snowballed into me being called a mentally unstable and unfit parent, or whatever he wants to call me, borderline. He has made the diagnosis himself. I have never had any formal diagnosis from any psychologist or therapist that I have seen other than mild depression

from the situational activities of my ex-husband's abuse and the kidnapping of my son five years ago."

Mother testified she and father have been involved in family court litigation for "many years." Around the Christmas holiday, notwithstanding father's accusations in the family law court that mother was mentally unstable, mother succeeded in getting her visitation expanded from monitored to unmonitored with weekend overnight visitation. Mother denied Charles's reports of bizarre behavior by mother during visits and noted she was the primary caretaker for Charles for almost 10 years. Mother asserted father has alienated Charles from mother

After hearing argument, the juvenile court sustained an allegation of physical abuse by mother finding mother's version of the incident not credible. The trial court sustained an allegation that "mother has exhibited bizarre behavior and incoherent speech." The juvenile court found the child's statements as well as the statements of police officers who went to mother's home a number of years ago substantiated this allegation. The statements of the police officers were contained in a police report attached to the detention report. The juvenile court found mother's behavior has continued and has resulted in the child being afraid of mother.

When the juvenile court indicated it would not hear argument from mother while she was represented by counsel, mother asked to fire counsel and represent herself. After the trial court conducted a *Marsden* hearing (*People v. Marsden* (1970) 2 Cal.3d 118), it indicated on the record that mother had refused to stay on topic during the hearing, she became angry and swore at the court. The juvenile court indicated that, based on its observation of mother's testimony and mother's behavior during the *Marsden* hearing, no benefit would be gained by continuing jurisdiction.

The juvenile court declared Charles a dependent of the court, ordered the child placed in the home of father and stayed an order terminating jurisdiction pending receipt

of a family law custody order pursuant to Welfare and Institutions Code section 361.2.<sup>1</sup> The juvenile court ordered mother and father to meet halfway between their respective homes for weekly three hour monitored visits. Upon receipt of a family law juvenile custody order, the juvenile court terminated jurisdiction in this case.

### CONTENTIONS

We appointed counsel to represent mother on this appeal. After examination of the record, counsel notified this court in writing that, pursuant to *In re Sade C.* (1996) 13 Cal.4th 952, counsel was unable to file an opening brief.

Mother has filed a supplemental opening brief in which she asserts her appointed counsel rendered ineffective assistance and the evidence is insufficient to sustain the petition.

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<sup>1</sup> Welfare and Institutions Code section 361.2 provides in relevant part: “(a) When a court orders removal of a child pursuant to Section 361, the court shall first determine whether there is a parent of the child, with whom the child was not residing at the time that the events or conditions arose that brought the child within the provisions of Section 300, who desires to assume custody of the child. If that parent requests custody, the court shall place the child with the parent unless it finds that placement with that parent would be detrimental to the safety, protection, or physical or emotional well-being of the child.

“(b) If the court places the child with that parent it may do either of the following:

“(1) Order that the parent become legal and physical custodian of the child. The court may also provide reasonable visitation by the noncustodial parent. The court shall then terminate its jurisdiction over the child. The custody order shall continue unless modified by a subsequent order of the superior court. The order of the juvenile court shall be filed in any domestic relation proceeding between the parents.

“(2) Order that the parent assume custody subject to the supervision of the juvenile court. In that case the court may order that reunification services be provided to the parent or guardian from whom the child is being removed, or the court may order that services be provided solely to the parent who is assuming physical custody in order to allow that parent to retain later custody without court supervision, or that services be provided to both parents, in which case the court shall determine, at review hearings held pursuant to Section 366, which parent, if either, shall have custody of the child.”

## DISCUSSION

### 1. *Mother fails to demonstrate ineffective assistance of counsel.*

Mother contends counsel failed to meet personally with mother to prepare a defense, failed to seek exclusion of the documents attached to the detention report, failed to present evidence on mother's behalf and failed to cross-examine witnesses. Mother asserts appointed counsel spoke with mother for only five minutes on the day counsel was appointed.

Mother's argument overlooks the fact mother's counsel did object to the police report attached to the report. Mother also fails to suggest how any of the proposed activities by mother's counsel might have altered the outcome of the adjudication. (*Strickland v. Washington* (1984) 466 U.S. 668, 697; *People v. Ledesma* (1987) 43 Cal.3d 171, 216-217.) Accordingly, no ineffective assistance of counsel can be shown.

### 2. *The evidence supports the juvenile court's findings.*

Mother contends the allegations of her mental disabilities arose five years ago when father manufactured them under the color of his badge as a California Highway Patrol Officer. Mother further asserts the allegations of her chemical dependence were false.

The evidence presented to the juvenile court abundantly supports the order sustaining the dependency petition as modified. Mother's insufficiency argument amounts to nothing more than a request that this court reweigh the evidence on appeal. That is not our function. (*People v. Johnson* (1980) 26 Cal.3d 557, 578.)

**DISPOSITION**

The order is affirmed.

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KLEIN, P.J.

We concur:

CROSKEY, J.

KITCHING, J.